

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>ROBERT L. WISE,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>CIVIL ACTION NO. 4:10-cv-04488</b>
	§	<b>Jury Demanded</b>
<b>UNITED STATES DEPARTMENT OF</b>	§	
<b>VETERANS AFFAIRS, BANK OF</b>	§	
<b>AMERICA, N.A., WELLS FARGO</b>	§	
<b>BANK, N.A., RE/MAX NORTHWEST</b>	§	
<b>REALTORS, AND DELILAH</b>	§	
<b>BIRMINGHAM</b>	§	
<b>Defendants.</b>	§	

**PLAINTIFF'S OPPOSED MOTION TO REMAND**

**TO THE HONORABLE UNITED STATES DISTRICT COURT:**

**NOW COMES** Plaintiff, Robert L. Wise, Movant herein, pursuant to 28 U.S.C. § 1447(c), and files this Motion To Remand this action previously removed from the 152nd Judicial District Court, Harris County, Texas, and states as follows:

**I.**

**A. TIMELINESS**

Removal of this action was not timely in that Defendants' Notice of Removal was filed more than 30 days after receipt of Plaintiff's Original Petition. Defendants were served on September 27, 2010, and the Notice of Removal is dated November 11, 2010. 28 U.S.C. § 1446(b) provides that "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant. . . ." 28 U.S.C. § 1446(b). Because removal was more than 30 days after service, it was untimely made, and remand is proper. Removal under 28

U.S.C. § 2679(d)(2) (Federal Tort Claims Act) is not appropriate, as Plaintiff is not alleging any tort claims against Defendant United States Department of Veterans Affairs. Plaintiff is filing, subject to this Motion to Remand, a Motion for Leave to File an Amended Petition clarifying his claims against all Defendants. Plaintiff seeks only to rescind and declare void a Warranty Deed from Defendant Wells Fargo to Defendant Veterans Affairs, and to impose a constructive trust upon real property currently titled in the name of Defendant Veterans Affairs. While these actions may fall under 28 U.S.C. 2409a (regarding actions to quiet title against the United States Government), no special provision exists in that statute extending the time period to file a removal action.

Because the filing was untimely and because no time-extending provisions apply to this action, removal was improper.

B. FAILURE TO JOIN

Further, removal of this action is not proper because not all Defendants have joined in the removal. 28 U.S.C. § 1446 requires that "all served defendants must join in the removal petition filed prior to the expiration of the removal period." *Gillis v. Louisiana*, 294 F.3d 755, 759 (5th Cir. 2002). RE/MAX Northwest Realtors, Delilah Birmingham and Wells Fargo Bank, N.A. have neither filed a notice of removal with this Court nor informed the Court of a consent to or joinder in the removal action filed. Therefore, removal was improper.

II.

Plaintiff respectfully moves this court to order Defendants to pay all costs, expenses and reasonable attorney's fees incurred by Plaintiff as a result of the removal action.

**WHEREFORE PREMISES CONSIDERED**, Plaintiff, Robert L. Wise, prays that the Court abstain from hearing this cause of action and remand the same to the 152nd Judicial District Court, Harris County, Texas, for resolution on the merits, for recovery of all costs and disbursements, including attorney's fees, incurred by reason of the removal proceedings; and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

By: Anne K. Ritchie

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**CERTIFICATE OF CONFERENCE**

This is to certify that on November 29, 2010, the undersigned attorney conferred with Joshua Bennett, Mark A. Bankston, Marshall G. Rosenberg and Daniel David Hu in good faith to resolve the issues surrounding this matter without court intervention, however those attempts failed because the Defendants are opposed to remand. Therefore, the matter is presented to the Court for determination.

/s/ Anne K. Ritchie  
Anne K. Ritchie

**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2010, a true and correct copy of the foregoing was sent by electronic document transfer through the Court's electronic filing system to the attorneys of record as indicated below.

/s/ Anne K. Ritchie

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